

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MICHAEL R. HORN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Dayton, OH

*Docket No. 02-2158; Submitted on the Record;  
Issued May 1, 2003*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability causally related to his accepted April 9, 2001 back injury.

On April 12, 2001 appellant, then a 39-year-old housekeeping aide on light duty, filed a traumatic injury claim alleging that he developed pain in his lower back on April 9, 2001 when another employee bumped into him.

Appellant was seen in the emergency room on April 10, 2001 when x-rays were taken. On May 10, 2001 the Office of Workers' Compensation Programs accepted appellant's claim for exacerbation of his chronic lumbago. Dr. Richard M. Thomas, a chiropractor, diagnosed a lumbar strain on July 7, 2001. Dr. Thomas stated that appellant could resume work on August 1, 2001, but then put this date off until October 1, 2001 and later November 1, 2001 on form reports. Appellant received continuation of pay from April 10 through May 25, 2001.

On July 31, 2001 the Office informed appellant that he was entitled to disability from April 9 until April 18, 2001 when he was released to return to light duty. Appellant again stopped work on April 23, 2001, but returned on April 25, 2001. He filed a recurrence of disability claim on April 25, 2001, stating that his back condition had worsened and that increasing pain made it impossible for him to work. Appellant claimed compensation from May 29, 2001 and continuing. The Office requested medical evidence to show that appellant was disabled from April 25 until May 28, 2001 due to the April 9, 2001 injury and thereafter.

On August 24, 2001 Dr. Thomas stated that the April 10, 2001 x-ray showed subluxation at L5 and opined that appellant's lower back pain and spasms, which precluded appellant from performing any work, were directly related to the subluxation. He stated that the injury occurred on April 10, 2001 when someone physically assaulted appellant at work. Dr. Naomi M. Kane, a Board-certified radiologist, interpreted the x-rays as showing minor degenerative changes without fracture or malalignment.

On October 22, 2001 the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish any causal relationship between the bumping incident on April 9, 2001 and appellant's back condition after April 26, 2001 when he stopped work.

Dr. Thomas released appellant to return to work on March 25, 2002 with restrictions on lifting, sitting, standing and repetitive bending and twisting. Appellant requested a hearing, which was held on April 30, 2002. He submitted a January 7, 2002 report from Dr. Thomas, who again diagnosed a subluxation at L4-5, a lumbar strain and lumbar intervertebral disc syndrome. Appellant also submitted an April 8, 2002 report from Dr. Ugo O. Nwokoro, Board-certified in internal medicine, who practices with Dr. Thomas.

Dr. Nwokoro stated that appellant had been under his care since July 2001 for "multiple medical problems," including hypertension, chronic anxiety/pain disorder and insomnia. He suspected a component of post-traumatic stress disorder and added that appellant was apparently assaulted at work by a fellow employee, resulting in the incident that kept appellant from working.<sup>1</sup>

On July 16, 2002 the hearing representative denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant was totally disabled after April 25, 2001. The hearing representative explained that appellant had filed multiple claims since 1995 because of back injuries and was on light duty when the April 9, 2001 bumping incident occurred. However, the record contained no rationalized medical opinion establishing that the work incident resulted in a disabling back injury on or after April 25, 2001.

The Board finds that appellant has failed to meet his burden of proof to establish a recurrence of disability causally related to his accepted work injury.

When an employee, who is disabled from the job he or she held when injured, returns to a limited- or light-duty position or the medical evidence establishes that the employee can perform the duties of such a position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence, a recurrence of total disability.<sup>2</sup> As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>3</sup>

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>4</sup> A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative

---

<sup>1</sup> Appellant filed a second occupational disease claim on March 27, 2002 after one day back at work and a recurrence of disability claim on April 1, 2002, alleging that he suffered stress and depression resulting from the April 9, 2001 incident and being back at work. These claims are not before the Board in this appeal.

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *Glenn Robertson*, 48 ECAB 344, 352 (1997).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b.(a)(1) (May 1997).

evidence that the disability for which he claims compensation is causally related to the accepted employment injury.<sup>5</sup> To meet this burden of proof, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup>

Causal relationship is a medical issue,<sup>7</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>8</sup> The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

In this case, the Office informed appellant of the type of evidence necessary to establish that either the requirements of his light-duty job had changed or that his work-related condition had worsened, resulting in a recurrence of disability causally related to the accepted work injuries. Appellant submitted no evidence that the requirements of his light-duty position had changed.

The Board finds that the medical evidence appellant submitted in support of his claim does not establish that his accepted back condition had worsened or that he sustained a recurrence of disability causally related to the work-related exacerbation of appellant's lumbago. After appellant returned to work on April 25, 2001, Dr. Thomas signed forms keeping appellant off work due to "back pain/injury," but provided no other information. On July 2 and September 19, 2001 Dr. Thomas indicated with a check mark on a form report that appellant's diagnosed lumbar strain was causally related to his employment but offered no medical explanation of his opinion. Thus, these reports cannot establish the requisite causal relationship.<sup>10</sup>

The August 10, 2001 report from Dr. Thomas contains a diagnosis of subluxation at L5, which he opined was the cause of appellant's lower back pain and muscle spasms. Dr. Thomas stated that "the work-related injury and subluxation which resulted from this work injury/assault precluded" appellant from working. However, the April 10, 2001 x-rays did not demonstrate a

---

<sup>5</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>6</sup> *Helen K. Holt*, 50 ECAB 279, 282 (1999).

<sup>7</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>8</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>9</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>10</sup> See *Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

subluxation, according to Dr. Kane, a Board-certified radiologist. Therefore, since Dr. Thomas did not interpret his own x-rays, he cannot be considered a physician under the Federal Employees' Compensation Act, and his report has no probative medical value in establishing disability.<sup>11</sup>

The April 8, 2002 report from Dr. Nwokoro fails to address the issue of whether appellant's disability after April 25, 2001 and prior to his return to work on March 25, 2002 was causally related to the April 9, 2001 incident. Therefore, his opinion that the "assault by a fellow employee" kept appellant from working and caused subsequent stress-related problems is insufficient to establish a recurrence of disability.<sup>12</sup>

The July 16, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
May 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>11</sup> See *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000) (chiropractors are considered to be physicians under section 8101(2) of the Act "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist," and subject to regulation by the Secretary).

<sup>12</sup> See *Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship).